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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEE ANDREW CAIN,)	1:07-CV-01571 OWW GSA HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
D. SMITH, Warden, et al.,)	
)	
Respondents.)	

____ Petitioner is a federal prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

BACKGROUND¹

Petitioner is currently in custody of the Bureau of Prisons at the United States Penitentiary located in Atwater, California, pursuant to a judgment of the United States District Court, Northern District of California, entered on March 12, 2001, following his conviction by plea of guilty to illegal possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). Petitioner was sentenced to a determinate prison term of 108 months in federal prison.

On October 26, 2007, Petitioner filed the instant petition for writ of habeas corpus

¹This information is derived from the Petition for Writ of Habeas Corpus.

1 (hereinafter "Petition") in this Court. Petitioner alleges that his sentence was not properly credited for
2 the time he spent in official custody prior to the commencement of his sentence.

3 **DISCUSSION**

4 I. Jurisdiction

5 A federal prisoner who wishes to challenge the validity or constitutionality of his conviction
6 or sentence must do so by way of a motion to vacate, set aside, or correct the sentence under 28
7 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir.1988); Thompson v. Smith, 719
8 F.2d 938, 940 (8th Cir.1983); In re Dorsainvil, 119 F.3d 245, 249 (3rd 1997); Broussard v. Lippman,
9 643 F.2d 1131, 1134 (5th Cir.1981). In such cases, *only the sentencing court has jurisdiction*.
10 Tripati, 843 F.2d at 1163. A prisoner may not collaterally attack a federal conviction or sentence by
11 way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Grady v. United States,
12 929 F.2d 468, 470 (9th Cir.1991); Tripati, 843 F.2d at 1162; see also United States v. Flores, 616
13 F.2d 840, 842 (5th Cir.1980).

14 In contrast, a federal prisoner challenging the manner, location, or conditions of that
15 sentence's execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241.
16 Capaldi v. Pontesso, 135 F.3d 1122, 1123 (6th Cir. 1998); United States v. Tubwell, 37 F.3d 175,
17 177 (5th Cir. 1994); Kingsley v. Bureau of Prisons, 937 F.2d 26, 30 n.5 (2nd Cir. 1991); United
18 States v. Jalili, 925 F.2d 889, 893-94 (6th Cir. 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3rd
19 Cir. 1991); United States v. Hutchings, 835 F.2d 185, 186-87 (8th Cir. 1987); Brown v. United
20 States, 610 F.2d 672, 677 (9th Cir. 1990).

21 In this case, Petitioner is challenging the execution of his sentence. Therefore, the Court has
22 jurisdiction to hear the instant claims in a habeas petition pursuant to § 2241.

23 II. Exhaustion

24 A petitioner who is in federal custody and wishes to seek habeas relief pursuant to 28 U.S.C.
25 § 2241 must first exhaust available administrative and judicial remedies. Brown v. Rison, 895 F.2d
26 533, 535 (9th Cir.1990); Chua Han Mow v. United States, 730 F.2d 1308, 1313 (9th Cir.1984). It is
27 only after a petitioner has fully exhausted his administrative remedies that he becomes entitled to
28 present his claims to the federal court. See United States v. Mathis, 689 F.2d 1364, 1365 (11th

1 Cir.1982). In Ruivwat v. Smith, 701 F.2d 844, 845 (9th Cir.1983) (per curiam), the Ninth Circuit
2 explained why a petitioner must first exhaust his administrative remedies before filing for habeas
3 relief: "The requirement of exhaustion of remedies will aid judicial review by allowing the
4 appropriate development of a factual record in an expert forum; conserve the court's time because of
5 the possibility that the relief applied for may be granted at the administrative level; and allow the
6 administrative agency an opportunity to correct errors occurring in the course of administrative
7 proceedings. See also Chua Hah Mow, 730 F.2d at 1313.

8 However, the exhaustion requirement was judicially created; it is not a statutory requirement.
9 Chua Han Mow, 730 F.2d at 1313; Montgomery v. Rumsfeld, 572 F.2d 250, 252 (9th Cir.1978).
10 Because exhaustion is not required by statute, it is not jurisdictional. Morrison-Knudsen Co., Inc. v.
11 CHG Int'l, Inc., 811 F.2d 1209, 1223 (9th Cir.1987), *cert. dismissed*, 488 U.S. 935 (1988);
12 Montgomery, 572 F.2d at 252. "Where exhaustion of administrative remedies is not jurisdictional,
13 the district court must determine whether to excuse the faulty exhaustion and reach the merits, or
14 require the petitioner to exhaust his administrative remedies before proceeding in court." Brown, 895
15 F.2d at 535.

16 In this case, Petitioner states he has exhausted his available remedies by pursuing all levels of
17 administrative remedies. Accordingly, it appears Petitioner has completely exhausted his remedies.

18 III. Review of Petition

19 On November 29, 1999, Petitioner was arrested by the FBI and taken into federal custody.
20 See Petition at 4. Following a bond hearing in the United States District Court for the Northern
21 District of California, on January 20, 2000, Petitioner was released on bond to Pretrial Services for
22 placement in a halfway house at Cornell Corrections. See Exhibit 1, Petition. On March 12, 2001,
23 Petitioner pled guilty to violating 18 U.S.C. § 922(g)(1). Petitioner began serving his 108-month
24 sentence following sentencing on April 29, 2002. See Petition at 4.

25 Petitioner was given credit for 57 days for the time he spent in jail prior to being released on
26 bond; however, Petitioner was not given any credit for the 235 days he spent in the halfway house
27 while he was released on bond. Petitioner alleges that the time he spent in the halfway house was
28 time spent in "official custody." Petitioner claims his sentence should be credited with this time.

1 Under 18 U.S.C. § 3568, "[t]he Attorney General shall give any such person credit toward
2 service of his sentence for any days spent in custody in connection with the offense or acts for which
3 sentence was imposed." The Ninth Circuit has held that "[i]t is the administrative responsibility of
4 the Attorney General, the Department of Justice, and the Bureau of Prisons to compute sentences and
5 apply credit where it is due. It is not the province of the sentencing court." United States v. Clayton,
6 588 F.2d 1288, 1292 (9th Cir.1979).

7 The Supreme Court addressed a virtually identical situation in Reno v. Koray, 515 U.S. 50
8 (1995). In Reno, the prisoner was released on bail, pending sentencing, and ordered confined to the
9 premises of the Volunteers of America community treatment center. Id. at 52-53. The prisoner
10 requested credit against his sentence for the approximately 150 days spent at the treatment center. Id.
11 at 53. The Supreme Court held that the time Petitioner spent at the treatment center while released
12 on bail was not "official detention" within the meaning of 18 U.S.C. § 3585(b). Id. at 65. Thus, the
13 Supreme Court found, the prisoner was not entitled to credit against his sentence for the time spent at
14 the treatment center.

15 Likewise, Petitioner's claim for credit against his sentence must be denied. Petitioner's case
16 is factually indistinguishable from Reno. Petitioner was not ordered detained or placed in official
17 detention. He was ordered to be released upon posting a bond. The conditions of the bond required
18 Petitioner to reside on the premises of Cornell Corrections halfway house. Petitioner was not in
19 "official detention" within the meaning of 18 U.S.C. § 3585(b). Accordingly, Petitioner is not
20 entitled to any credit against his sentence for the time he spent at Cornell Corrections. The petition
21 should be denied with prejudice.

22 **RECOMMENDATION**

23 Accordingly, the Court HEREBY RECOMMENDS that:

- 24 1) The petition for writ of habeas corpus be SUMMARILY DENIED; and
25 2) The Clerk of Court be DIRECTED to enter judgment.

26 This Findings and Recommendation is submitted to the United States District Court Judge
27 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the
28 Local Rules of Practice for the United States District Court, Eastern District of California. Within

1 thirty (30) days after being served with a copy of this Findings and Recommendation, any party may
2 file written objections with the Court and serve a copy on all parties. Such a document should be
3 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the
4 Objections shall be served and filed within ten (10) court days (plus three days if served by mail)
5 after service of the Objections. The Court will then review the Magistrate Judge's ruling pursuant to
6 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified
7 time may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153
8 (9th Cir. 1991).

9 IT IS SO ORDERED.

10 **Dated: November 2, 2007**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE